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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967, C-570-968]

Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Air Master Awning LLC (Air Master), the Department of Commerce (Commerce) is initiating anti-circumvention inquiries to determine whether imports of aluminum jalousie shutters that are processed in the Dominican Republic from window frame extrusions produced in the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from China. We are also self-initiating scope inquiries to determine whether the aluminum jalousie shutters are subject to the AD and CVD orders.

DATES: Applicable [Insert the date of the publication of the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2924.

## SUPPLEMENTARY INFORMATION:

### Background

Following Commerce's final affirmative determinations of dumping and countervailable subsidies,<sup>1</sup> and the U.S. International Trade Commission (ITC)'s finding of material injury,<sup>2</sup> Commerce issued AD and CVD orders on imports of aluminum extrusions from China, which were published in the *Federal Register* on May 26, 2011.<sup>3</sup>

On September 25, 2018, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(h), Air Master requested that Commerce initiate anti-circumvention inquiries on imports of aluminum jalousie shutters completed or assembled in the Dominican Republic using window frame extrusions sourced from China that are subject to the *Orders*.<sup>4</sup> Air Master alleges that the completion/assembly of the aluminum jalousie shutters constitutes a "minor alteration," within the meaning of 781(c) of the Act.<sup>5</sup> Further, pursuant to 19 CFR 351.225(f), Air Master requested that Commerce issue preliminary determinations of circumvention of the *Orders* concurrently with the initiation, to suspend liquidation of imports of aluminum jalousie shutters from the Dominican Republic.<sup>6</sup> Air Master submitted supplements to

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<sup>1</sup> See *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011); and *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011).

<sup>2</sup> See *Certain Aluminum Extrusions from China*, 76 FR 29007 (May 19, 2011).

<sup>3</sup> See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

<sup>4</sup> See Air Master Letter, "Aluminum Extrusions from the People's Republic of China, A-570-967 and C-570-968; Request for Circumvention Ruling Pursuant to Section 781(c) of the Tariff Act of 1930," dated September 25, 2018 (Anti-Circumvention Ruling Request).

<sup>5</sup> *Id.* at 2. We note that Air Master's Anti-Circumvention Ruling Request alleges that the assembly of the aluminum jalousie shutters in the Dominican Republic represents a minor alteration within the meaning of section 781(c) of the Act. Because section 781(b) of the Act relates to "merchandise completed or assembled in other foreign countries," and section 781(c) of the Act relates to "minor alterations of merchandise," we are initiating anti-circumvention inquiries under both 781(b) and (c) of the Act.

<sup>6</sup> *Id.* at 2 and 19.

its request in October and December 2018.<sup>7</sup> Separately, Commerce issued a supplemental questionnaire to Air Master on February 11, 2019,<sup>8</sup> to which Air Master responded on February 19, 2019.<sup>9</sup>

On October 19, 2018, the Puerto Rico Agencies Co., Inc., submitted comments on the proposed anti-circumvention inquiries.<sup>10</sup> On April 18, 2019, the Aluminum Extrusions Fair Trade Committee (the petitioner) submitted a letter in support of Air Master's request for anti-circumvention inquiries.<sup>11</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>12</sup> If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Between November 9, 2018, and April 26, 2019, Commerce extended the initiation deadline for Air Master's request.<sup>13</sup> The revised deadline is now May 2, 2019.

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<sup>7</sup> See Air Master Letter, "Aluminum Extrusions from the People's Republic of China, A-570-967 and C-570-968; Request for Circumvention Ruling Pursuant to Section 781(c) of the Tariff Act of 1930," dated October 1, 2018 (First Supplement to Anti-Circumvention Ruling Request); and Air Master Letter, "Aluminum Extrusions from the People's Republic of China, A-570-967 and C-570-968; Request for Circumvention Ruling Pursuant to Section 781(c) of the Tariff of 1930; Submission of Supplemental Information," dated December 18, 2018.

<sup>8</sup> See Commerce Letter, "Aluminum Extrusions from the People's Republic of China Anti-Circumvention Inquiry: Air Master Awning, LLP," dated February 11, 2019.

<sup>9</sup> See Air Master Letter, "Aluminum Extrusions from the People's Republic of China, A-570-967 and C-570-968; Anticircumvention Inquiry; Response of Air Master Awning LLC to the Department's Request for Further Information," dated February 19, 2019 (Second Anti-Circumvention Ruling Request).

<sup>10</sup> See Letter, "Re: Aluminum Windows from the Dominican Republic/Air Master Awing (sic) LLC," placed on the record by Commerce in a Memorandum dated April 25, 2019.

<sup>11</sup> See Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Letter in Support of Air Master Awning LLC's Request for an Anti-Circumvention Inquiry," dated April 18, 2019.

<sup>12</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in these segments of the proceedings have been extended by 40 days.

<sup>13</sup> See Memorandum, "Aluminum Extrusions from the People's Republic of China – Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry," dated November 9, 2018; Memorandum, "Aluminum Extrusions from the People's Republic of China – Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry," dated December 20, 2018; Memorandum, "Aluminum Extrusions from the People's

### Scope of the *Orders*

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods.

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Republic of China – Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry,” dated April 5, 2019; Memorandum, “Aluminum Extrusions from the People’s Republic of China – Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry,” dated April 12, 2019; and Memorandum, “Aluminum Extrusions from the People’s Republic of China – Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry,” dated April 23, 2019, and Memorandum, “Aluminum Extrusions from the People’s Republic of China – Extension of Time to Determine Whether to Initiate Anti-Circumvention Inquiry,” dated April 26, 2019.

Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods “kit” defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the *Orders* merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0,

C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (“mm”) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of the *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45,

8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

#### Merchandise Subject to the Anti-Circumvention and Scope Inquiries

These anti-circumvention and scope inquiries cover aluminum jalousie shutters exported from the Dominican Republic that are manufactured from window frame extrusions produced in China. Commerce intends to consider whether these inquiries should apply to all exports of

extruded aluminum products from the Dominican Republic that meet the description of the *Orders*.

Allegations Supporting Initiation of Anti-Circumvention Proceedings: Merchandise Completed or Assembled in Other Foreign Countries

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting an anti-circumvention inquiry, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD or CVD order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, Air Master provided evidence with respect to these criteria.

A. *Merchandise of the Same Class or Kind*

Air Master claims that aluminum jalousie shutters exported to the United States are of the same class or kind as that covered by the *Orders* and substantiated its claim with evidence

showing that the merchandise from the Dominican Republic enters the United States under the same tariff classification as subject merchandise.<sup>14</sup>

*B. Completion of Merchandise in a Foreign Country*

Section 781(b)(1)(B)(ii) of the Act requires that Commerce must determine whether, “before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which ... is produced in the foreign country with respect to which such an order or finding applies.” Air Master presented evidence from United Nations Commodity Trade Statistics Database (UN COMTRADE) showing substantial imports of Chinese doors, windows, and frames into the Dominican Republic following imposition of the *Orders* in 2011.<sup>15</sup> Air Master also provided evidence from the ITC’s Trade Dataweb showing that imports into Puerto Rico of aluminum windows and frames from China significantly decreased after the imposition of the *Orders*,<sup>16</sup> and that imports into Puerto Rico of aluminum windows and frames from the Dominican Republic decreased significantly after imposition of the *Orders*. However, imports increased again beginning in March 2018, when Air Master alleges the circumvention began.<sup>17</sup>

*C. Minor or Insignificant Process*

Air Master maintains that the process for manufacturing aluminum jalousie shutters from window frame extrusions represents a minor alteration.<sup>18</sup> Under section 781(b)(2) of the Act, Commerce considers five factors in determining whether the process of assembly or completion in the foreign country is minor or insignificant: (1) the level of investment in the foreign country

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<sup>14</sup> See Anti-Circumvention Ruling Request at 7 and 18.

<sup>15</sup> *Id.* at 18. Air Master notes that because UN COMTRADE data does not report imports at the 10-digit statistical subheading level, it is not possible to obtain data specific to aluminum windows and frames.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 18.

<sup>18</sup> *Id.* at 2.

in which the merchandise is completed or assembled; (2) the level of research and development in the foreign country in which the merchandise is completed or assembled; (3) the nature of the production process in the foreign country in which the merchandise is completed or assembled; (4) the extent of production facilities in the foreign country in which the merchandise is completed or assembled, and (5) whether the value of the processing performed in the foreign country in which the merchandise is completed or assembled represents a small proportion of the value of the merchandise imported into the United States.

(1) Level of Investment

Air Master contends that the level of investment necessary to support the assembly operations of Dominican companies that can produce aluminum jalousie shutters from window frame extrusions in the Dominican Republic is insignificant.<sup>19</sup> In support of its contention, Air Master compares the investment necessary to perform the finishing operations in the Dominican Republic with the investment necessary to produce window frame extrusions.<sup>20</sup> Air Master's analysis included the building and all equipment.<sup>21</sup> According to Air Master, even the smallest extruder in China would require an initial investment at least 2,000 times greater than the investment required to perform the finishing operations in the Dominican Republic.<sup>22</sup> Air Master concludes, therefore, that in comparison to the investment necessary to extrude aluminum in China, the cost of the finishing operations in the Dominican Republic is insignificant.<sup>23</sup>

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<sup>19</sup> *Id.* at 12.

<sup>20</sup> *Id.* at 12-14.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 14.

<sup>23</sup> *Id.*

(2) Level of Research and Development

Air Master asserts that there is no research or development for aluminum jalousie shutters taking place in the Dominican Republic, as aluminum jalousie shutters are not a technologically advanced or sophisticated product.<sup>24</sup> According to Air Master, there has been no significant technological advancement in the product itself or in its production for years.<sup>25</sup>

(3) Nature of Production Process

According to Air Master, the finishing operations performed in the Dominican Republic consist of merely cutting to length and screwing together Chinese window frame extrusions.<sup>26</sup> This process, Air Master argues, constitutes approximately 15 percent of the value of an aluminum jalousie shutter,<sup>27</sup> and is, thus, only a minor alteration of the merchandise.<sup>28</sup>

(4) Extent of Production Facilities in the Dominican Republic

Air Master asserts that the production facilities for aluminum jalousie shutters in the Dominican Republic are limited to the operations that assemble Chinese window frame extrusions into aluminum jalousie shutters that are then exported to Puerto Rico.<sup>29</sup> Air Master also states that there are only three such production facilities in the Dominican Republic.<sup>30</sup>

(5) Value of Processing in the Dominican Republic

Air Master asserts that producing window frame extrusions in China accounts for a large percentage of the total value of aluminum jalousie shutters that are produced in the Dominican Republic using window frame extrusions from China.<sup>31</sup> Using its own costs as a reference, Air

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<sup>24</sup> *Id.* at 16.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 9.

<sup>27</sup> *Id.* at 15.

<sup>28</sup> *Id.* at 9.

<sup>29</sup> *Id.* at 17.

<sup>30</sup> *Id.*; *see also* First Supplement to Anti-Circumvention Ruling Request at 2.

<sup>31</sup> *See* Anti-Circumvention Ruling Request at 15.

Master estimates that the aluminum window frame extrusions account for at least 85 percent of the cost of the aluminum jalousie shutter assembled in the Dominican Republic.<sup>32</sup>

*D. Additional Factors to Consider in Determining Whether Action Is Necessary*

Section 781(b)(3) of the Act directs Commerce to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the order, such as: “(A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise ... is affiliated with the person who uses the merchandise ... to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise ... have increased after the initiation of the investigation which resulted in the issuance of such order or finding.”

Regarding patterns of trade, Air Master contends that publicly available import data from UN COMTRADE document that imports of Chinese aluminum doors, windows, and frames into the Dominican Republic have increased significantly in recent years.<sup>33</sup> It also states that the ITC Trade Dataweb shows that there has been a surge in imports of aluminum windows and frames from the Dominican Republic into Puerto Rico starting in March 2018.<sup>34</sup> Air Master did not provide evidence that Chinese exporters of window frame extrusions are affiliated with the Dominican finishers.

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 18.

<sup>34</sup> *Id.* at 18-19.

Allegations Supporting Initiation of Anti-Circumvention Proceedings: Minor Alterations of Merchandise

Section 781(c)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when products which are of the class or kind of merchandise subject to an AD or CVD order have been “altered in form or appearance in minor respects ... whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD} order{.}”

Although the statute is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors which should be considered before reaching an anti-circumvention determination. In conducting an anti-circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported product.”<sup>35</sup> Commerce will examine these factors in evaluating an allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i). Still, because each case is highly dependent on the facts on the record, each must be analyzed in light of the specific facts. Moreover, although

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<sup>35</sup> See S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) (“In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article”).

not specified in the statute, Commerce has also considered additional factors as part of its anti-circumvention analysis.<sup>36</sup>

*A. Overall Physical Characteristics*

Air Master contends that the window frame extrusions are shipped in profiles that dedicate them for use only as frames and other components of a window.<sup>37</sup> Furthermore, Air Master alleges that when exported from China, the window frame extrusions are already powder coated in the color of the jalousie shutter.<sup>38</sup> Thus, Air Master argues, the dedicated profile of the window frame extrusion, the powder-coated finish, and the basic assembly steps performed to assemble a jalousie shutter, establish that the window frame extrusions already have the essential characteristics of a jalousie shutter.<sup>39</sup>

Moreover, Air Master notes that, because window frame extrusions and jalousie shutters are both classified under the same HTS subheading (*i.e.*, 7610.10.00.10), the assembly into a jalousie shutter does not transform the window frame extrusion into a different article for Customs purposes.<sup>40</sup>

*B. Expectations of the Ultimate Users*

Air Master argues that, as explained above, window frame extrusions have only one purpose: to be assembled into aluminum jalousie shutters.<sup>41</sup> Thus, Air Master states, the

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<sup>36</sup> See, e.g., *Brass Sheet and Strip from West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990), unchanged in *Brass Sheet and Strip from Germany; Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991); see also *Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873, 37876 (June 25, 2012).

<sup>37</sup> See Anti-Circumvention Ruling Request at 9-10.

<sup>38</sup> *Id.* at 10.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

ultimate customers have the same expectations for window frame extrusions as they have for aluminum jalousie shutters.<sup>42</sup>

*C. Channels of Marketing*

Air Master contends that, prior to issuance of the *Orders*, window frame extrusions imported from China were sold in Puerto Rico through an aluminum extrusions broker, but that the issuance of the *Orders* put an end to that direct channel of sales and marketing.<sup>43</sup> Air Master further states that, at present, the same broker imports and sells aluminum jalousie shutters in Puerto Rico that are assembled in the Dominican Republic from Chinese-origin window frame extrusions.<sup>44</sup> In this way, Air Master argues, the customs broker has developed a scheme to circumvent the *Orders* by diverting window frame extrusions to the Dominican Republic, where they undergo a minor alteration before re-exportation to Puerto Rico.<sup>45</sup> With respect to the Puerto Rico channel of marketing, Air Master contends that the channels for marketing window frame extrusions and aluminum jalousie shutters are identical.<sup>46</sup>

*D. Cost of Modification*

Air Master contends that the cost of assembling window frame extrusions into aluminum jalousie shutters is low relative to the cost to produce a jalousie shutter, and must be viewed relative to: (1) the cost of the investment required to support the assembly operations of Dominican companies relative to the investment required to produce a window frame extrusion; and (2) the direct cost of assembling a jalousie shutter relative to the total cost of a jalousie shutter.<sup>47</sup>

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<sup>42</sup> *Id.* at 10-11.

<sup>43</sup> *Id.* at 11.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 12.

With respect to the relative cost of initial investment, Air Master compares the investment necessary to perform the finishing operations in the Dominican Republic with the investment necessary to produce window frame extrusions.<sup>48</sup> Air Master's analysis includes the building and all equipment.<sup>49</sup> According to Air Master, even the smallest extruder in China would require an initial investment at least 2,000 times greater than the investment required to perform the finishing operations in the Dominican Republic.<sup>50</sup> Air Master concludes, therefore, that, in comparison to the investment necessary to extrude aluminum in China, the cost of the finishing operations in the Dominican Republic is insignificant.<sup>51</sup>

With respect to the direct cost of assembly of a jalousie shutter compared to the direct cost to produce a window frame extrusion, Air Master asserts that producing window frame extrusions in China accounts for a large percentage of the total value of aluminum jalousie shutters that are produced in the Dominican Republic using window frame extrusions from China.<sup>52</sup> Using its own costs as a reference, Air Master estimates that the aluminum window frame extrusions account for at least 85 percent of the cost of the aluminum jalousie shutter assembled in the Dominican Republic.<sup>53</sup>

*E. Additional Factors to Consider in Determining Whether Action Is Necessary*

Air Master argues that, in addition to the factors above, Commerce may also consider several of the factors set forth in 781(b) of the Act with respect to determining whether merchandise completed or assembled in third countries is circumventing the AD and CVD *Orders*. According to Air Master, several of these factors mirror those in a "minor alteration"

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<sup>48</sup> *Id.* at 12-14.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 14.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 15.

<sup>53</sup> *Id.*

analysis brought under 781(c) of the Act, while others do not, but, nonetheless, support a conclusion that assembling aluminum jalousie shutters in the Dominican Republic is merely a minor alteration of Chinese window frame extrusions.<sup>54</sup>

(1) Level of Research and Development

Air Master asserts that there is no research or development for aluminum jalousie shutters taking place in the Dominican Republic, as aluminum jalousie shutters are not a technologically advanced or sophisticated product.<sup>55</sup> According to Air Master, there has been no significant technological advancement in the product itself, or in its production, for years.<sup>56</sup>

(2) Aluminum Facilities in the Dominican Republic Manufacture Only for Export Markets

Air Master asserts that the production facilities for aluminum jalousie shutters in the Dominican Republic are limited to the operations that assemble Chinese window frame extrusions into aluminum jalousie shutters that are then exported to Puerto Rico.<sup>57</sup> Air Master also states that there are only three such production facilities in the Dominican Republic.<sup>58</sup>

(3) Pattern of Trade

Air Master contends that publicly available import data from UN COMTRADE document that imports of Chinese aluminum doors, windows, and frames into the Dominican Republic have increased significantly in recent years.<sup>59</sup> Air Master also states that the ITC Trade

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<sup>54</sup> *Id.* at 16.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 17.

<sup>58</sup> *Id.*; *see also* First Supplement to Anti-Circumvention Ruling Request at 2.

<sup>59</sup> *See* Anti-Circumvention Ruling Request at 18.

Dataweb shows that there has been a surge in imports of aluminum windows and frames from the Dominican Republic into Puerto Rico starting in March 2018.<sup>60</sup>

#### Analysis of the Allegations

Based on our analysis of the information provided by Air Master, Commerce finds that there exists a sufficient basis to initiate anti-circumvention inquiries, pursuant to sections 781(b) and (c) of the Act. Commerce will determine whether the merchandise subject to the inquiries (identified in the “Merchandise Subject to the Anti-Circumvention Inquiries and Scope Inquiries” section, above) involves merchandise either completed or assembled in other foreign countries which can be considered subject to the *Orders*, and/or represents a minor alteration to subject merchandise in such minor respects that it should be subject to the *Orders*.

Commerce intends to issue questionnaires to solicit information from Dominican producers and exporters identified by Air Master concerning their shipments of aluminum jalousie shutters to the United States and the origin of the imported window frame extrusions being processed into aluminum jalousie shutters.<sup>61</sup> A company’s failure to respond completely to Commerce’s requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

While we find that sufficient factual information has been submitted by Air Master supporting its request for inquiries, we do not find that the record supports the simultaneous issuance of a preliminary ruling. Such inquiries are, by their nature, typically complicated and can require information regarding production in both the country subject to the order and the third country completing the product. As noted above, Commerce intends to request additional

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<sup>60</sup> *Id.* at 18-19.

<sup>61</sup> *Id.* at 4; *see also* First Supplement to Anti-Circumvention Ruling Request at 2.

information regarding the statutory criteria to determine whether shipments of aluminum jalousie shutters from the Dominican Republic are circumventing the *Orders*. Thus, with further development of the record required before a preliminary ruling can be issued, Commerce does not find it appropriate to issue a preliminary ruling at this time.

#### Initiation of Scope Inquiries

The scope of the *Orders* states that the scope “{e}xcludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels.”

Air Master states that both the window frame extrusions exported from China and the aluminum jalousie shutters exported from the Dominican Republic are not finished merchandise, and are subject to the *Orders*.<sup>62</sup> However, because the scope of the *Orders* provides that certain types of windows are not subject to the *Orders*, we find it appropriate to self-initiate scope inquiries, in accordance with 19 CFR 351.225(b), to determine whether the aluminum jalousie shutters at issue constitute subject merchandise.

#### Notification to Interested Parties

In accordance with 19 CFR 351.225(e), Commerce finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise. Accordingly, Commerce will notify by mail all parties on Commerce’s scope service list of the initiation of these proceedings.

In addition, in accordance with 19 CFR 351.225(f)(1)(i) and (ii), in this notice of initiation issued under 19 CFR 351.225(e), we have included a description of the product that is

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<sup>62</sup> See Anti-Circumvention Ruling Request at 5-6; see also Air Master Second Anti-Circumvention Ruling Request at 2 and 5.

the subject of these proceedings (*i.e.*, aluminum extrusions) and an explanation of the reasons for Commerce's decision to initiate these inquiries, as provided above.

Furthermore, in accordance with 19 CFR 351.225(l)(2), if Commerce issues preliminary affirmative determinations, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiries.

Moreover, in the event we issue preliminary affirmative determinations of circumvention, pursuant to section 781(b) of the act (Merchandise Completed or Assembled in Other Foreign Countries), we intend to notify the ITC, in accordance with section 781(b)(1) of the Act and 19 CFR 351.225(f)(7)(i)(B), if applicable.

Commerce will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. In accordance with 19 CFR 351.225(f)(5), Commerce intends to issue its final scope ruling within 120 days of this initiation. In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final anti-circumvention determinations within 300 days of the date of publication of this initiation.

This notice is published in accordance with sections 781(b) and (c) of the Act and 19 CFR 351.225(h) and (i).

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

Dated: April 30, 2019.

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